Paper No. 19
JQ

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTTAB 9/23/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dal-Con Promotions, Inc.

Serial No. 74/176,705

Francie R. Gorowitz of Ladas & Parry for applicant.

Raul F. Cordova, Trademark Examining Attorney, Law Office 114 (Mary Frances Bruce, Managing Attorney).

Before Quinn, Walters and Wendel, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Dal-Con Promotions, Inc. to register the mark RIVER RUN for "souvenir novelty jewelry pins sold in connection with a motorcycle rally, primarily at the rally" (in International Class 14); "souvenir t-shirts sold in connection with a motorcycle rally, primarily at the rally" (in International Class 25);

and "organizing and conducting a motorcycle rally" (in International Class 41).[1]

The Trademark Examining Attorney has refused registration in International Class 25 only. As the basis of the refusal under Section 2(d) of the Trademark Act, the Examining Attorney asserts that applicant's mark, when applied to applicant's "souvenir t-shirts sold in connection with a motorcycle rally, primarily at the rally," so resembles the previously registered mark RIVER RUN for "clothing for skiing, hunting and fishing, namely jackets, vests, pants, overalls and one piece suits"[2] as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.

Applicant, in urging that the refusal be reversed, argues that although the marks are identical in sound and appearance, they have different meanings when applied to the respective goods. Applicant, relying on a dictionary definition of "run," contends that the registered mark,

---

[1] Application Serial No. 74/176,705, filed June 17, 1991, alleging dates of first use of March 20, 1983 and dates of first use in interstate commerce of June 30, 1983. The application originally was filed by Dale A. Marschke. The application subsequently was assigned to Dal-Com Promotions, Inc., and the assignment is recorded in the Assignment Branch of the Office at reel 1842, frame 0747.

[2] Registration No. 1,412,446, issued October 7, 1986; Section 8 affidavit filed and accepted.

particularly with respect to the clothing for fishing, "connotes the migration of fish up or down a river."[3] Applicant goes on to claim that its mark, on the other hand, is "totally arbitrary and has no meaning other than applicant's motorcycle rally." Applicant also contends that given the restriction in its identification of goods, the goods are sold in different channels of trade--applicant's at or in connection with a motorcycle rally and registrant's at sporting goods stores and the like, or in sports clothing departments of clothing or department stores. Lastly, applicant claims that the purchasers of the respective goods are sophisticated, asserting that "purchasers of applicant's souvenir t-shirts that are sold in connection with applicant's motorcycle rally are motorcycle enthusiasts who associate the source of the t-shirt with the source of the rally" and that purchasers of registrant's clothing are "looking for a particular type and quality of clothing appropriate for their particular sport." (reply brief, p. 2)

The Examining Attorney counters by pointing to the identity between the involved marks, and contending that the goods are similar and move in similar channels of

[3] The term "run" is defined, in part, as "a migration of fish (as up or down a river) esp. to spawn." *Merriam Webster's Collegiate*

trade. The Examining Attorney asserts that the restriction in applicant's identification is open ended, and "the fact that the [t-shirts] will be sold in connection with a certain event again does not impose any limitations on applicant." (brief, p. 4) The Examining Attorney has submitted pages from a department store catalog showing, according to the Examining Attorney, that sportswear items are not necessarily expensive.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Federated Food, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

In the present case, the marks are identical in sound and appearance. Nonetheless, registrant's mark, when applied to registrant's specific goods, would appear to have a somewhat suggestive meaning, connoting the outdoors. Applicant's mark, on the other hand, when applied to souvenir t-shirts sold in connection with a motorcycle

---

Dictionary (10th ed.)

rally, primarily at the rally, clearly suggests an association with the motorcycle rally organized under the same mark by applicant.

Insofar as the goods are concerned, it is well settled that the issue of likelihood of confusion in these types of cases must be determined on the basis of the goods as they are identified in the involved application and registration. In re Elbaum, 211 USPQ 639, 640 (TTAB 1981). Further, we acknowledge that there is no per se rule governing likelihood of confusion in cases involving clothing items. In re British Bulldog, Ltd., 224 USPQ 854 (TTAB 1984); and In re Sydel Lingerie Co., Inc., 197 USPQ 629, 630 (TTAB 1977).

In the present case, we find that applicant's identification of goods includes significant restrictions (that is, "*souvenir* t-shirts *sold in connection with a motorcycle rally, primarily at the rally*") which clearly differentiate applicant's t-shirts from registrant's skiing, hunting and fishing clothing. Contrary to the Examining Attorney's contentions, the restrictions in applicant's identification convince us that the respective goods travel in different channels of trade to different classes of purchasers. The purchasers of applicant's souvenir t-shirts obviously are aware of applicant's rally,

and know, when buying these t-shirts, that the goods are associated with applicant.

Based on the limited record before us, we see the likelihood of confusion finding of the Examining Attorney as amounting to only a speculative, theoretical possibility. Language by our primary reviewing court is helpful in resolving the likelihood of confusion controversy in this case:

> We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.

Electronic Design & Sales Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), *citing* Witco Chemical Co. v. Whitfield Chemical Co., Inc., 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g* 153 USPQ 412 (TTAB 1967).

Decision: The refusal to register is reversed.

T. J. Quinn

C. E. Walters

H. R. Wendel
Administrative Trademark Judges, Trademark Trial and Appeal Board